UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,694	04/08/2008	Neil John Barrett	U 016438-3	9650

140 7590 09/28/2011

LADAS & PARRY LLP
1040 Avenue of the Americas
NEW YORK, NY 10018-3738

EXAMINER	
GONZALEZ, PAOLO	

ART UNIT	PAPER NUMBER
3785	

NOTIFICATION DATE	DELIVERY MODE
09/28/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

nyuspatactions@ladas.com
nymail@ladas.com

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/589,694	BARRETT ET AL.	
	Examiner	Art Unit	
	PAOLO GONZALEZ	3785	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 September 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires *4* months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/CHERYL J. TYLER/
Supervisory Patent Examiner, Art Unit 3744

/PAOLO GONZALEZ/
Examiner, Art Unit 3785

Continuation of 11. does NOT place the application in condition for allowance because:

In response to applicant's arguments (page 2) that Federspiel et al. fail to disclose converting values of temperature measured at corresponding values of relative humidity to values of perceived temperature at a constant reference value of relative humidity, the examiner respectfully disagrees. Federspiel et al. disclose obtaining (through sensors 62, 64, and 66) measured values of temperature, vapor pressure/relative humidity (see Col. 12, line 24, where it is recited that vapor pressure can be humidity, thus relative humidity), and wind velocity relating to said environment (see Figure 3 and Figure 5, step 110; Col. 12, lines 10-26). Federspiel et al. further disclose calculating values of perceived temperature (V, comfort index) using a control algorithm (see figures 5, step 120; Col. 2, lines 12-15; Col. 6, lines 52-62) based on input from sensors 62 (sensing temperature), 64 (sensing ambient vapor pressure, such as relative humidity; see Col. 12, line 24), 66 (sensing wind velocity), etc (see Col. 12, lines 21-24 and lines 52-67) and based on a constant reference value of vapor pressure (see Col. 12, line 24, where it is recited that vapor pressure can be humidity, thus relative humidity) (see Col. 7, line 64 to Col. 8, line 18). Therefore, it is implicitly understood that the controller (50), which contains the processing unit (51) is converting values of temperature measured (sensed by sensor 62) at corresponding values of relative humidity (sensed by sensor 64) to values of perceived temperature (V, comfort index) at a constant reference value of relative humidity. Therefore, the applicant's arguments are unpersuasive and the rejection is maintained.

In response to applicant's argument (page 3, 1st ¶ to page 4, 2nd ¶) that "the claimed invention attempts to match a reference input (i.e., a set-point) to the environmental conditions;" or that "the claimed invention does not define Perceived Temperature in terms of thermal equilibrium;" or that "each of a plurality of measured temperature values is modified based on a (single) constant value of relative humidity...;" It is noted that according to MPEP 2111 that during patent examination, the pending claims are "given their broadest reasonable interpretation consistent with the specification." It is further noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, by given the claims "their broadest reasonable interpretation" the prior art of record still reads in the claims as claimed. Therefore, the applicant's arguments are unpersuasive and the rejection is maintained.

In response to applicant's argument (page 4, 3rd ¶ to page 5, 1st ¶) that because applicant submitted a substitute declaration claiming priority from Australian Application 2004901054 with filling date of 03/01/2004 and because a certified copy thereof was submitted on the same date (08/23/2011), Barnwell is not a prior art reference due to its date of year 2004; the examiner respectfully disagrees. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(a)-(d), or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(a)-(d), as follows: The later-filed application (instant application) must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application or foreign application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See Transco Products, Inc. v. Performance Contracting, Inc., 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).
The disclosure of the prior-filed application, Foreign Application No. AU 2004901054, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application.
After considering everything the applicant has disclosed in the Foreign Application and what is disclosed in the Instant Application; applicant is not entitle to the benefit of the foreign application filling date since the independent claims in the instant application includes limitation(s) (i.e., "converting values of temperature measured at corresponding values of relative humidity to values of perceived temperature at a constant reference value of relative humidity;" as per claims 1 and 10; and "determining values of perceived temperature at a constant reference value of relative humidity as a function of corresponding wind chill-compensated values of temperature measured at corresponding values of relative humidity...;" as per claims 38 and 40) that is/are not supported by the disclosure in the Foreign Application. In fact, these limitations were added as a IPEA/409 - Int'l Preliminary Amendment to the Nattional Stage Application (i.e., the PCT application; see 409 amendment to specification and claims on 08/17/2006). The foreign application only provides support for "calculating a value of perceived temperature as a function of the measured values" and "the perceived temperature is calculated as a function of the relative humidity and the wind chill-compensated temperature that is calculated in step 230..." (i.e., see page 3, lines 5-6, lines 21-22, and lines 29-30; page 6, lines 27-30; page 8, lines 1-6). Nowhere in the foreign application is support for these limitations as recited in independent claims 1, 10, 38, and 40 of the instant application. Therefore, the applicant's arguments are unpersuasive and the rejection is maintained.

In response to applicant's arguments (page 175, 2nd ¶ to page 186, 1st ¶) against the references individually, it has been held that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Thus, combination of the teachings of Timmons, Federspiel, and Barnwell teach the invention as recited above. Therefore, the applicant's arguments are unpersuasive and the rejection is maintained.